

1 Todd Ashker, C58191
2 DANNY Troxell, B76578
3 Box 7500 (D1-SHU)
4 Crescent City, CA 95532-7500

5 Plaintiffs, in pro se
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FILED
SEP 26 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

9
10 THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND - DIVISION

13 Todd Lewis Ashker,) Case No. C05-3286 CW
14 Danny Troxell,) DECLARATION OF David
15 Plaintiffs,) Chance, #B40557 ,
16 vs.) IN SUPPORT OF
17 Arnold Schwarzenegger, et al.,) PLAINTIFFS.
18 Defendants.)

19
20 I, David Chance, prison No. B40557, declare
21 as follows:

22 1) I am a state prisoner serving a term of
23 life, subsequent to my 1972 conviction for first
24 degree murder and robbery. I am not a party to
25 this case, but I am submitting this declaration
26 in support of plaintiffs' cause of action in the
27 above entitled matter. Based upon information,
28 belief and personal knowledge of the matters

1 set forth herein, I am willing, able and competent
2 to testify to such matters if called upon to do so.

3 2) I was received into the custody of the
4 California Department of Corrections & Rehabilitation
5 (CDCR) in March 1972, and my Minimum Eligible
6 Parole Date was 12-01-78. Since my initial parole
7 eligibility hearing, held sometime in 1977, I have
8 had twelve subsequent parole hearings, wherein
9 the Board of Parole Hearings (BPH) panels have all
10 found me unsuitable for parole. In each and
11 every case, the denial was based on a
12 boilerplate formula as follows: 1) The nature of
13 the commitment offense [nothing in the
14 commitment offense, murder/robbery, was
15 more aggravated or violent than the minimum
16 necessary to commit the crime for which I
17 was convicted]; 2) Failure to obtain "necessary"
18 programming; and 3) Failure to reduce custody
19 level so as to get out of the SHU and have
20 access to vocational/academic upgrading, as
21 well as self-help programs.

22 3) As of March 13, 2008, my classification
23 score was at 270 points; my last Rules
24 Violation Report prior to the June 5, 2007 BPH
25 hearings was on October 17, 2002. (The first rules
26 violation in 12 years).

27 4) I have been confined to the Security
28 Housing Unit (SHU) for approximately 34 of the

more than 36 years that I have been incarcerated.
I have been in SHU on Indeterminate status
since 1985, based solely on alleged gang
Association/Membership. (Note: On December 7, 2002,
I, along with 39 co-defendants, was taken into
custody by the U.S. Marshals Service and arraigned
in the U.S. District Court, Los Angeles, on
charges related to prison gang activities under
R.I.C.O, in U.S. vs. Mills, et al., No. CR 02938 GHK,
and on November 3, 2006, ALL charges against
me were dismissed WITH PREJUDICE.) Never-
theless, upon my return to PBSP on 1-31-07, I
was immediately placed back in the SHU
based on the identical factors used against
me in the federal RICO case that were dis-
missed with prejudice.

5) I have been confined in the SHU at
PBSP since January 1990 without access to
vocational/academic programs or self-help
opportunities, though, recently some limited
educational courses, mostly GED/high school
courses, via cell-study, have been made
available on the institutional TV channels.
There remains no vocational nor any meaningful
self-help programs.

6) The BPH has demonstrated a total lack
of due process at past parole hearings by their
soliciting or attempting to solicit from me and

1 other lifers an agreement to waive parole consider-
2 ation hearings in exchange for 2 or 3 year
3 denials, or else risk a 5 year denial of
4 parole.

5 7) The BPH maintains a no-parole policy
6 for SHU life prisoners who have failed to "de-
7 brief", and have on more than one occasion
8 stated this fact to me on record. The BPH
9 defends this practice by holding that a
10 failure to "debrief" prevents a prisoner's
11 release from SHU to the general population,
12 and thus, access to programs deemed by
13 the BPH as "necessary" before the setting
14 of a release date. (Note: declarant's life
15 sentence did not include any requirement
16 that would make such programming a pre-
17 requisite for parole release.

18 8) I have formally requested to "debrief" on
19 numerous occasions beginning in 1986, and as
20 recently as February 20, 2007, but was refused
21 each time due to a failure/inability to admit
22 gang involvement/membership, and to implicate
23 others.

24 9) During the fifty months that I was out-
25 to-court in Mills, et al., #CR 02938 GHK, it came
26 to light during my review of the over 500,000
27 pages of discovery documents, consisting of
28 debriefing reports, confidential files, CDCR

1 internal memos, policies, and housing records, that
 2 no prisoner serving an indeterminate SHU term
 3 with a life sentence has ever received a parole
 4 release date

5) At my twelfth parole consideration
 6 hearing on June 5, 2007, I was again denied
 7 a parole release date, and the denial was set
 8 at three years, in violation of court order not
 9 to hand down lengthier denials than previous
 10 panels had given without stating reasons for
 11 doing so. (the court order comes from In re
 12 Rutherford/In re Inez Tito Lugo, Marin County
 13 Superior Court, No. SC135399A, CA1 No. A114111,
 14 in which the court was concerned the BPH
 15 would hand down lengthier denials in order to
 16 comply with another court order that the BPH
 17 eliminate their enormous backlog of overdue
 18 parole suitability hearings). Declarant had
 19 only been denied for two years at his tenth
 20 and eleventh subsequent parole hearings.
 21 In addition to the two-year denial handed
 22 down at my February 26, 2002 (eleventh)
 23 hearing, I was unable to attend my twelfth
 24 subsequent parole hearing until June 5,
 25 2007, over five years later, due to being
 26 out-to-court, and yet the most recent
 27 BPH panel handed down a three-year
 28 denial without stating reasons for the

lengthier denial.

11) The only alternative to the debriefing requirement is to be "inactive" for a period of six years, a CDCR policy initiated in 1999, whereby the Institutional Gang Investigation unit (IGI) conducts an "inactive" review of each alleged gang member/associate every six years to determine whether the prisoner has involved himself in gang activity. However, the vagueness and arbitrariness of this "review" process makes it impossible to be deemed "inactive". Examples: The IGI ruled that I was "active" in their 2001 review based solely on findings that an un-named prisoner in Tehachapt, (CCI) California Correctional Institution, allegedly sent or received a letter from another un-named person on the outside (free world), in which, it was alleged, my name had been mentioned in some unknown capacity, and that one, or both, of the un-named parties were allegedly members/associates of the Aryan Brotherhood. Their alleged use of my name in some unknown capacity was deemed proof by the IGI that I was "active" in a prison gang for another six years. Then on September 26, 2007, the IGI conducted yet another

inactive review and concluded once again that I was "active" based on four points: 1) A confidential memo, dated 4-2-05, in which the source identifies me as a gang member; 2) A confidential memo, dated 12-31-06, in which the source provided information that I had recently sponsored another person for membership into the gang* (Note: as previously indicated, I was not at PBSP or the custody of the CDCR at this time, but rather in the custody of the U.S. Marshals Service from 12-7-02 to 1-31-07); 3) A list of first names and birthdates (no last names or identification numbers). (Note: the list of names followed me back to PBSP from the San Bernardino County Detention Center where I, along with all the names on the list, were co-defendants in U.S. v. Mills, et al., supra, and where we spent three years together and we, being civil human beings, celebrated each other's birthdays — another point lost on the IGI); and 4) Two St. Patrick's Day cards that had shamrocks on them. (IGI holds that the shamrock is one of many logos/signs used by the Aryan Brotherhood — regardless of what it's on or how it's used). Therefore, my alleged gang membership will remain as "active" member for another six years until 2013, at which time I'll receive another

1 so-called "inactive review." (Note: The IGI decision
 2 of September 26, 2007, is currently under
 3 administrative appeal, # PBSP-D-08-00425,
 4 and was filed with the Director of Corrections
 5 for Third Level Response on March 27, 2008).

6 12) To the best of my recollection I have never
 7 been charged with, nor found guilty of any gang-
 8 related activity. Certainly since my incarceration in
 9 PBSP from January, 1990 to present, I have not been
 10 charged with any illegal, gang-related activity.

11 13) Throughout my entire 36 years of incarceration
 12 within the CDCR, I have never witnessed, nor
 13 have I known of a single prisoner to utilize nude
 14 photographs, magazine pictures or artwork to harass
 15 or harry correctional personnel. In fact, it has
 16 been my experience that those inmates who are
 17 or have been disruptive and abusive do not use,
 18 seek to obtain or require nude pictures in order
 19 to become problematic. Furthermore, the CDCR
 20 has in the past, and without incident, always
 21 been quite competent in setting forth guidelines
 22 and restrictions on where and how prisoners may
 23 or may not openly display nude pictures within
 24 their living quarters. In addition, I have never
 25 known nor heard of a single prison guard com-
 26 plain of being harassed or harried by the use
 27 of nude pictures. I have, however, heard a
 28 very small number of correctional guards

1 openly voice their moral aversion to "pornography"
2 as it relates to their religious views. Yet I have
3 never heard a single correctional guard, male
4 or female, religious or not, complain or demon-
5 strate any aversion to the daily strip searches
6 they perform on nude prisoners.

7 14) From January 1990 to December 2002, I had
8 subscriptions to numerous magazines which
9 included: Tattoo; Flash; Tattoo Savage; Skin and
10 Ink; Skin Art; Easyriders; Biker; Outlaw
11 Biker; In The Wind; and Women of Outlaw
12 Biker, all of which were approved and received
13 in PBSP. However, upon my arrival at PBSP in
14 January 1990, I was denied a large portion
15 of my personal property, including all of my
16 artwork. I filed suit in the Northern District
17 Court, whereupon the court ordered both
18 the Warden of PBSP and the Director of
19 Corrections to file a written report con-
20 cerning the sending and receiving of art
21 through the U.S. mail, and the possession
22 of art by prisoners. At that time, PBSP
23 disallowed all drawings, sketches, designs
24 or graphics to be sent to or from prisoners.
25 However, when complying with court order to
26 file a written report with the court concerning
27 their policy, PBSP officials radically modified
28 their position and allowed me to have all

1 of my drawings, designs, sketches and graphics.
2 I failed to prosecute further, having achieved
3 my main goal, and the court denied or
4 dismissed my complaint. The complaint did
5 not include a "tattoo" business, or "tattoo design"
6 business. I continue to receive, send and create
7 sketches, drawings, designs and graphics to
8 this day unless PBSP-1G1 officials determine
9 it to be gang related in some manner, ie:
10 Shamrock in a St. Patrick's Day drawing.

11 I hereby declare under penalty of
12 perjury that the foregoing is true and correct
13 to the best of my knowledge, and was executed
14 on this 29th day of June, 2008, at Pelican
15 Bay State Prison, SHU D3-211, Crescent City,
16 California.

17 [S] David Chance

18 David Chance, #B40557
19 DECLARANT

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